

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| IN THE MATTER OF THE | § |
| PETITION OF GEARL T. | § Nos. 346 and 359, 2011 ¹ |
| FLOWERS FOR A WRIT OF | § |
| MANDAMUS | § |

Submitted: August 4, 2011

Decided: August 16, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 16th day of August 2011, it appears to the Court that:

(1) The petitioner, Gearl T. Flowers, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus² to compel the Superior Court to grant his motion for a new trial. The State of Delaware has filed an answer requesting that Flowers' petition be dismissed. We find that Flowers' petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) The record before us reflects that Flowers was found guilty by a Superior Court jury of Burglary in the Third Degree and Theft. Thereafter, he filed a motion for a new trial. An office conference on the motion was held in the Superior Court in March 2011. The motion has not yet been acted upon by the Superior Court. The Superior Court docket reflects that the Superior Court has

¹ The petitions in these two matters are identical.

² Del. Const. art. IV, §11(5); Supr. Ct. R. 43.

continued the sentencing hearing for Flowers pending its disposition of the motion for a new trial.

(3) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.³ As a condition precedent to the issuance of the writ, the petitioner must demonstrate that a) he has a clear right to the performance of the duty; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its duty.⁴ This Court will not compel the Superior Court to decide a matter in a particular way.⁵

(4) Flowers has failed to demonstrate that the Superior Court has arbitrarily failed or refused to perform a duty owed to him. Moreover, it is not this Court's function to compel the Superior Court to decide Flowers' motion for a new trial in a particular way. As such, Flowers' petition must be dismissed.

NOW, THEREFORE, IT IS ORDERED that Flowers' petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

³ *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

⁴ *Id.*

⁵ *Id.*